

Appeal No. VA93/3/004

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Henkel Ireland Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Factory and Grounds at Map Reference: 3, Townland: Inchera, Ward: Caherlag, R.D. Cork  
Upper, Co. Cork

Quantum - Contractor's basis of valuation

**B E F O R E**

**Henry Abbott**

**S.C. Chairman**

**Veronica Gates**

**Barrister**

**Paddy Farry**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 15TH DAY OF DECEMBER, 1994**

By Notice of Appeal dated the 23rd day of July, 1993 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £2,782 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are:-

- "(i) That the valuation is bad in law
- (ii) That the valuation is inequitable."

**The Property:**

The property is a chemical factory in Little Island, the industrial centre of Cork city and county. Two product types are manufactured:-

- (a) Tetra Acetyl Ethylene Diamine (TAED)
- (b) Chemical Reagents (Aldoxine)

The Revision at 1991 arose from 3 developments.

***(1) Erection of TAED Plant:***

The plant was completed in October 1990 and in full production in May 1991. Output is 7,000 tonnes per annum with production by continuous batch process. The plant is operated to ISO standard.

***(2) Extension of Aldoxine Plant:***

The changes doubled plant capacity from 2,000 to 4,000 tonnes per annum. The original plant was constructed in 1974 and has been subjected only to ongoing maintenance.

***(3) Assorted Additions, including two storey workshop offices:*****Valuation History:**

In recent years the property was the subject of Revision and First Appeal in 1986, 1987 and 1989. In some of these rateability was at issue; the 1989 appeal was withdrawn. The valuation before the current Revision was £1,205 or £895 buildings, £310 absolute. On Revision the total R.V. was increased to £2,782 and on First Appeal this figure was unchanged although the figure for buildings was reduced by £145 to £2,240 and miscellaneous increased by the same amount to £542.

**Written Submissions:**

A written submission was received on the 11th January, 1994 from Mr. Desmond M. Killen, F.R.I.C.S. I.R.R.V., of Donal O'Buachalla & Company Limited, on behalf of the appellant.

In his written submission Mr. Killen supplied a map of the subject and gave details of the property and its valuation history. He set out his assessment of the rateable valuation on:-

- (a) Comparable Basis

- (b) N.A.V./R.V. Basis
- (c) Contractors Basis

These are attached to this judgement as Appendix A.

A written submission was received on the 13th January, 1994 from Mr. Terence Dineen B.Agr. Sc., a District Valuer with 19 years experience in the Valuation Office, on behalf of the respondent.

In his written submission in addition to describing the property and its valuation history, Mr. Dineen gave details of the costs of the developments carried out on the subject and set out his assessment of the rateable valuation. Details of this assessment are set out in Appendix B to this judgement.

Following adjournment of the appeal to the 25th and 26th May, 1994, Mr. Dineen supplied two additional submissions to the Tribunal.

In the first additional submission dated 12th May, 1994, Mr. Dineen set out further details of why the comparable basis, that is a price per square metre method, should be rejected by the Tribunal. He suggested that the fixing of R.V.'s was a two-stage process both of which involved comparisons. He said that this led to a lot of confusion regarding the word comparison as in the I.M.I. case. He said the comparisons can be considered in two stages; stage one to fix a rent/N.A.V. on the subject, stage two to produce a conversion factor or percentage from N.A.V. to R.V..

Mr. Dineen said that when Section 5 of the 1986 Act is considered, stage one and stage two comparisons can both relate to properties which are comparable and of similar function. However, for stage one comparisons, properties whose valuations have been made or revised within a recent period are not required or necessary, i.e. it is irrelevant regarding those comparisons when the valuations were struck.

In relation to the second stage of the comparisons Mr. Dineen argued that as this point was not being argued in these cases, stage two comparisons were irrelevant and therefore, valuations made or revised within a recent period were irrelevant. He said that this was why attempts to relate new N.A.V.'s and R.V.'s to valuations in the lists, not themselves based on N.A.V. evidence, was flawed.

Mr. Dineen then argued as to why the Contractor's Basis should apply.

This additional submission also gave details of the Contractor's Basis of valuation and of the comparison, Cara Partners Factory at Wallingstown, Cork Upper, which had been adduced by Mr. Dineen in evidence.

Mr. Dineen's second additional submission dated the 13th May, 1994 contained extracts from publications relating to the Contractor's Basis for valuation.

**Oral Hearing:**

The oral hearing commenced herein on the 19th day of January, 1994 in the Council Chamber, Cork Corporation, Cork and resumed on the 26th day of May, 1994 following an inspection on the 25th day of May, 1994. Mr. Desmond Killen appeared for the appellant and Mr. Terence Dineen appeared for the respondent.

The hearing was assisted by an inspection of the subject together with other intensive chemical and manufacturing installations in the area. Mr. Killen's argument was that the premises occupied by Cara Partners had been recently valued and that if the respondents were arguing that a capital cost method be applied to determine the valuation in relation to the subject then they should do so with reference to the standards applicable in Cara Partners. The Cara Partners capital cost was £4.5m and the derivation of the relevant capital cost indicated a figure close to that sum. Mr. Killen argued that the rateable valuation estimate of £650.00 equated to capital value of approximately £1m. Mr. Dineen argued that Cara Partners had been incorrectly valued and said that the Commissioner of Valuation was influenced by older valuation methodologies when fixing this valuation. Both valuers agreed that there was no rental market which indicated the rents which might pass for structures of the type of the subject. Both parties agreed that there was a standard of £2.25 or so for standard warehouse space which was reflected in market prices. The hearing included argument which was raised in relation to other cases regarding the applicable ratio, whether the applicable ratio of R.V. to N.A.V., should be 0.63% or 0.5%. Mr. Killen argued that the cooling tower on the roof of the T.A.E.D. building was entitled to exemption under the Schedule of Section 8 of the Valuation Act, 1986 on the basis that it was used for the purpose of inducing a process of change. It emerged that the cost of the Cooling Tower if it were to be valued was £70,000.

The valuation of the Showerlux premises was considered and there was considerable debate about capital cost methods of valuation.

**Findings:**

- (1) The Tribunal is satisfied that the subject premises constitutes a high class industrial complex for which there are no comparable passing rents in evidence.
- (2) The premises ought to be valued "*rebus sic stantibus*" on the basis that they are producing an economic return.
- (3) The premises, especially the T.A.E.D. 700 building, involve a standard of construction  
as regards the strength of the structure that far exceeds the requirements of normal factory space and have a role in maintaining the stability of chemical plants which are assembled primarily in the vertical direction as well as the horizontal and the strength of the building cannot in valuation terms be "apportioned" over to the plant itself so as to reduce rateable valuation.
- (4) The Tribunal finds that the indication of a standard of £2.25 for standard factory space indicates that the factory space in the Cork area produces a reasonable rate of return on capital to ensure a continued supply of same.
- (5) In the circumstances, it is appropriate that similar rates of return on capital would be applied to the subject premises and the approach of the respondent in relation to same is basically correct.
- (6) The decisions of the Tribunal in **VA93/3/005 & VA93/3/006 - F.M.C. International Limited** and the earlier **VA89/0/042 & VA90/3/015 - Janssen Pharmaceuticals Limited** represent an evolution of the Tribunal's thinking in relation to the law in this area. In the Janssen Pharmaceuticals Limited appeal the Tribunal held:-  
"The Tribunal does not ... rule out the validity of taking a capital cost approach based on relevant calculations in certain cases. However, when this latter approach is being taken by the party it may only be pursued by the production of actual construction costs and appropriate vouching data or equivalent professional evidence."

- (7) The appropriate ratio in accordance with the **VA92/6/029 - M.F. Kent & Company** decision is 0.5%.
- (8) The N.A.V. of the Aldoxine Extension is £59,961 which adjusted by 0.5% is R.V. £299.80 i.e £299.00.
- (9) The approach of the respondents in relation to the T.A.E.D. building is basically appropriate but the Tribunal finds no reason why the N.A.V. of same should exceed 4.8% of capital cost as in the Aldoxine Extension and accordingly adjusts the N.A.V. of £140,000 based on 6% return to the appropriate figure of £110,400 based on 4.8% return resulting in a valuation based on the 0.5% ratio of £552.00
- (10) The valuation of the absolute items excluding the cooling tower, on the basis of the respondents estimation is affirmed at £171.00. In addition on the basis of the decision of the High Court in **VA88/0/056 - Pfizer Chemical Corporation -v- Commissioner of Valuation** (726SS) unreported judgement delivered on the 28th day of July, 1994, the cooling tower is rateable and on the basis of a cost of £70,000 the valuation of same ought to be £17.00. The total absolute valuation is therefore £188.00.
- (11) The valuation of £85.00 on the assorted buildings ought to be adjusted down by the 0.5% ratio giving a valuation adjusted to £67.00.

Having regard to the foregoing, the position may be summarised as follows:-

(1)	Aldoxine Extension	-	£ 299.00
(2)	TAED Building	-	£ 552.00
(3)	Absolute Valuation	-	£ 188.00
(4)	Assorted Buildings	-	£ 67.00
(5)	Old Valuation - Buildings	-	£ 895.00
	- Absolute	-	<u>£ 310.00</u>
	<b>Total Valuation</b>		<b>£2,311.00</b>

